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NATIONAL BOARD OF MEDICAL EXAMINERS,
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Attorneys for Plaintiff
CORNELL WELLS, JR.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORNELL WELLS, JR.,

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS, a not-for-profit corporation,
FEDERATION OF STATE MEDICAL
BOARDS, INC., a not-for-profit corporation,

Defendants.

Case No. 3:21-cv-01279-JSC

**UPDATED JOINT CASE MANAGEMENT
STATEMENT**

Date: September 30, 2021
Time: 1:30 p.m.
Judge: Hon. Jacqueline Scott Corley

1 **1. JURISDICTION & SERVICE**

2 The parties have no new, additional information to provide to the Court that was not
3 included in their initial Joint Case Management Statement.

4 **2. FACTS**

5 Subsequent to the initial Case Management Conference, Dr. Wells was granted a medical
6 license in Colorado, on September 1, 2021, and he is awaiting decisions in two other states to
7 which he has applied for licensure, one of which is California. Apart from this, the parties have
8 no new, additional information to provide to the Court that was not included in their initial Joint
9 Case Management Statement. However, it should be noted that neither side has initiated
10 discovery as of the date of this updated Joint Case Management Conference Statement, and both
11 sides reserve the right to supplement factual details as they are learned through discovery.

12 **3. LEGAL ISSUES**

13 The legal issues remain the same as stated in the parties' initial Joint Case Management
14 Statement.

15 **4. MOTIONS**

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17 2/23/2021	Plaintiff's Motion for Leave to Proceed In Forma 18 Pauperis (Dkt. 5)	Granted 2/24/21 (Dkt. 10)
19 4/9/2021	NBME's Motion for Leave to Appear Pro Hac 20 Vice (Robert Burgoyne) (Dkt. 22)	Granted 4/13/21 (Dkt. 23)
21 5/4/21	FSMB's Motion for Leave to Appear Pro Hac 22 Vice (Robert Burgoyne) (Dkt. 30)	Granted 5/5/21 (Dkt. 31)

23 Plaintiff's Position

24 Plaintiff will be filing a motion for leave to amend the Complaint prior to the deadline,
25 which may expand the legal issues involved in this matter and to explain in detail the basis for
26 Plaintiff's continued claims under the ADA and Unruh. Plaintiff also intends to move for
27 injunctive relief under the ADA. Plaintiff will also file appropriate pre-trial motions in limine.

Defendants' Position

If not voluntarily dismissed by Plaintiff, Defendants may move to dismiss Plaintiff's ADA claim and requests for injunctive relief for lack of subject matter jurisdiction, on the grounds of mootness.

5. AMENDMENT OF PLEADINGS

See Plaintiff's Position as stated in 4, above.

6. EVIDENCE PRESERVATION

Plaintiff's/Defendants' Agreed Position

Counsel have agreed to conduct an updated Fed. R. Civ. P. Rule 26(f) conference in advance of the CMC on September 30, 2021 pursuant to the Court's Rule 26(f) Checklist, which will include a thorough discussion of issues pertaining to electronically stored information.

Counsel will be prepared to report on discussions at the CMC.

7. DISCOVERY

Plaintiff's Position:

Protective Order: The parties have not yet executed a stipulated protective order. To facilitate third-party discovery, Defense counsel provided a draft Disclosure Authorization Form to Plaintiff's counsel on August 17, 2021. Due to unanticipated events, Plaintiff's counsel was not able to provide any comments on the draft until September 23, 2021. It is anticipated that the issues pertaining to the Disclosure Authorization Form can be worked out cooperatively, but if not, counsel will be prepared to discuss the issues at the CMC.

Defendants' Position:

See above discussion, under "Plaintiff's Position."

8. CLASS ACTIONS

Plaintiff's Position:

Once Plaintiff amends the Complaint, this matter may be one that should be certified as a class. Plaintiff intends to allege that Defendants have engaged in a pervasive pattern and practice of discriminating against disabled applicants wishing to take the USMLE by repeatedly and

1 willfully denying accommodations to the disabled applicants. The effect of these actions by
2 Defendants is that Defendants are not offering the USMLE in a “manner accessible to persons
3 with disabilities.” 42. U.S.C. § 12189. Moreover, by not providing accommodations to disabled
4 test takers, specifically including Dr. Wells, Defendants continue to violation the ADA by not
5 “ensuring” that the test results “accurately reflect the individual’s aptitude or achievement level”
6 rather than reflecting the individual’s impairment.” 28 C.F.R. § 36.309(b)(1)(i). This pervasive
7 pattern and practice is evidenced by the numerous lawsuits filed against Defendants, particularly
8 NBME, alleging disability discrimination as well as a Consent Decree entered into by NBME and
9 the U.S. Dept. of Justice.

10 According to a study reported in the Journal of the American Medical Association, March 12,
11 2021, only 3.1% of the medical profession is comprised of individuals with disabilities. Zakia,
12 Nouri, et al. Estimated Prevalence of U.S. Physicians with Disabilities, JAMA Network Open,
13 https://jama.jamanetwork.com/article.aspx?doi=10.1001/jamanetworkopen.2021.1254&utm_campaign=articlePDF%26utm_medium=articlePDFlink%26utm_source=articlePDF%26utm_content=jamanetworkopen.2021.1254
14 [=jamanetworkopen.2021.1254](https://jama.jamanetwork.com/article.aspx?doi=10.1001/jamanetworkopen.2021.1254&utm_campaign=articlePDF%26utm_medium=articlePDFlink%26utm_source=articlePDF%26utm_content=jamanetworkopen.2021.1254). This statistic stands in stark comparison with 26% of the U.S.
15 population as a whole, as reported by the Centers for Disease Control. Centers for Disease
16 Control and Prevention. Disability and Health Data System (DHDS) [Internet]. [updated 2018
17 May 24; cited 2018 August 27]. Available from: <http://dhds.cdc.gov>. Dr. Wells contends this is
18 due, in whole or in part, to systemic denial of disability accommodations on the USMLE, which
19 is the key to opening the door to a medical career in every state in this country. Dr. Wells is
20 confident that these allegations will be borne out through discovery, investigation, fact-gathering,
21 statistical information, and expert witnesses.
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1 Defendant's Position

2 Plaintiff's suggestion that the current action "may be one that should be certified as a
3 class" is both vague and surprising, given the absence of any such suggestion previously. He
4 does not state whether he actually intends to include class allegations in the amended complaint
5 that he says he will be filing. If he does so, Defendant will vigorously oppose class certification.
6 Under the Americans with Disabilities Act, decisions on accommodation requests must be made
7 on a case-by-case basis and are, by definition, individualized. The fact that Plaintiff's request for
8 accommodations was denied by Defendant in no way reflects a "pattern and practice" of
9 discrimination and provides no basis for a class action lawsuit. Defendant also notes that the
10 schedule reflected in the Court's initial scheduling order would need to be revised considerably if
11 Plaintiff purported to be proceeding on a class basis.
12

13 **9. RELATED CASES**

14 The parties have no new, additional information to provide to the Court that was not
15 included in their initial Joint Case Management Statement.
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17 **10. RELIEF**

18 The parties have no new, additional information to provide to the Court that was not
19 included in their initial Joint Case Management Statement.

20 **11. SETTLEMENT AND ADR**

21 Counsel have met and conferred regarding ADR and have agreed to informally attempt
22 resolution of this matter on their own between now and November 15, 2021. If the matter has not
23 been resolved by November 15, 2021, counsel have agreed the matter should be referred to a
24 Magistrate Settlement Conference.
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1 **12. CONSENT TO MAGISTRATE FOR ALL PURPOSES**

2 Plaintiff's/Defendants' Agreed Position:

3 The parties have already consented to a magistrate judge conducting all further
4 proceedings.

5 **13. OTHER REFERENCES**

6 None.

7 **14. NARROWING ISSUES**

8 The parties have no new, additional information to provide to the Court that was not
9 included in their initial Joint Case Management Statement.

10 **15. EXPEDITED TRIAL PROCEDURE**

11 The parties have no new, additional information to provide to the Court that was not
12 included in their initial Joint Case Management Statement.

13 **16. SCHEDULING**

14 The Court has issued a Pre-Trial Order setting forth scheduling.

15 **17. TRIAL**

16 Trial of this matter may take longer than the current estimate, depending on the
17 amendments Plaintiff makes to the Complaint.

18 **18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

19 The parties have no new, additional information to provide to the Court that was not
20 included in their initial Joint Case Management Statement.

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1 **19. PROFESSIONAL CONDUCT**

2 All attorneys of record for the parties have reviewed the Guidelines for Professional
3 Conduct for the Northern District of California.

4
5 DATED: August 6, 2021

PERKINS COIE LLP

6
7 By /s/ Robert A. Burgoyne

Torryn Taylor Rodgers

8 Robert A. Burgoyne

9 Attorneys for Defendants
10 NATIONAL BOARD OF MEDICAL
11 EXAMINERS, and FEDERATION OF
12 STATE MEDICAL BOARDS, INC.

13
14 DATED: August 6, 2021

YOUNG LAW GROUP

15 By /s/ Eric G. Young*

16 Eric G. Young

17 Attorneys for Plaintiff
18 CORNELL WELLS, JR.
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CERTIFICATE OF SERVICE***Wells Jr. v. National Board of Medical Examiners, et al.*****USDC-ND, Oakland Division, Case No. 3:21-cv-01279-JSC**

At the time of service, I was over 18 years of age and not a party to this action. My business address is 411 Russell Avenue, Santa Rosa, CA 95403. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On September 23, 2021, I served the following identified document(s):

UPDATED JOINT CASE MANAGEMENT STATEMENT

I served the document(s) on all interested parties as follows:

Name of Party/Counsel Served:Attorney For:

Torryn Taylor Rodgers
Robert Bourgoyne
Perkins Coie LLP
505 Howard Street, Ste. 1000
San Francisco, CA 94105
Tel: 415-344-7000
TRodgers@perkinscoie.com
RBourgoyne@perkinscoie.com

Attorneys for National Board of Medical
Examiners, and Federation of State
Medical Boards, Inc.

I served the above-named documents as follows:

BY FACSIMILE TRANSMISSION - pursuant to agreement of the parties, from fax number (707) 289-8059 to the fax number(s) set forth above. The facsimile machine I used complied with Rule 2.301(3) and no error was reported by the machine. Pursuant to Rule 2.306(h)(4), I caused the machine to print a transmission record, a copy of which is attached.

BY MAIL -

By personally depositing the documents in a sealed envelope addressed as set forth above with the U.S. Postal Service, postage fully prepaid, sent by regular mail and certified mail, return receipt requested

X By placing documents enclosed in a sealed envelope addressed as set forth above for collection and mailing. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. In the ordinary course of my firm's business, correspondence is deposited with U.S. postal service on the same day it is placed for collection, postage fully prepaid.

BY PERSONAL SERVICE - by delivering a copy of the document(s) by hand to the addressee.

1 **BY EXPRESS SERVICE** - by depositing in a box or other facility regularly maintained
2 by the express service carrier or delivering to an authorized courier or driver authorized by the
3 express service carrier to receive documents, in an envelope or package designated by the express
service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be
served.

4 **BY ELECTRONIC TRANSMISSION** - pursuant to agreement of the parties, or by
5 Court order, transmitting a PDF version of the document(s) by electronic mail to the party(ies)
identified above using the e-mail address(es) indicated.

6 X **BY ELECTRONIC TRANSMISSION ONLY DURING**
7 **CORONAVIRUS/COVID-19 PANDEMIC** – The document(s) were emailed to the persons at
8 email addresses listed based on notice previously provided that, during the Coronavirus
9 (COVID-19) pandemic, this office will be primarily working remotely, unable to send
physical mail as usual, and is therefore using only electronic mail. No electronic message
or other indication that the transmission was unsuccessful was received within a
reasonable time after the transmission.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 x I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14 Date: September 23, 2021

YOUNG LAW GROUP

15 /S/Jackie Campbell
16 Jackie Campbell
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